

BOX AF
EXPEDITED PROCESSING
RESPONSE UNDER 37 C.F.R. § 1.116
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of:)	Confirmation No.: 2638
)	
Michael R. Friton)	Group Art Unit: 3728
)	
Appln. No.: 10/776,242)	Examiner: John T. Kavanaugh
)	
Filed: February 12, 2004)	Atty. Docket No.: 005127.00180
)	
For: FOOTWEAR AND OTHER SYSTEMS)	
INCLUDING A FLEXIBLE MESH OR)	
BRAIDED CLOSURE SYSTEM)	

REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. § 1.116

BOX: AF
U.S. Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

Applicant respectfully requests reconsideration of the Final Office Action dated December 5, 2006.

I. General Remarks Regarding the Content of this Request for Reconsideration

Claims 7-23 and 30-37 remain pending in this application. No amendments are made by this paper, and no additionally fees are due as a result of this paper.

II. Applicant's Claims Patentably Distinguish from the Cited Art

A. Claims 7, 8, 10, 11, 13-17, 19, 21-23, 30, 31, 33, 34, 36, and 37 Patentably Distinguish from Allen

Claims 7, 8, 10, 11, 13-17, 19, 21-23, 30, 31, 33, 34, 36, and 37 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Allen, et al., U.S. Patent No. 5,497,564 (hereinafter "Allen"). See the December 5, 2006, Final Office Action at page 2. Applicant respectfully traverses this rejection and requests reconsideration.

For anticipation to exist, each and every element of the claimed invention must be shown in a single prior art reference. See *The Manual of Patent Examining Procedure* ("M.P.E.P.") § 2131, and the cases cited therein. Moreover, for anticipation to exist, this single prior art reference must show the claimed elements arranged in the same manner as recited in the claim. *Id.* As will be demonstrated below, the Allen patent fails to anticipate Applicant's claimed invention.

For example, Applicant's independent claims 7, 16 and 30 recite a mesh or braided panel of a foot-receiving device (claims 7 and 30) or article of footwear (claim 16) closure system that at least partially extends around the foot-housing member (claims 7 and 30) or upper member (claim 16), "over a top instep portion" of the foot-housing member or upper member. Allen does not teach or suggest this claimed mesh or braided panel arrangement.

The Office points to Fig. 6 and element 98 in Allen as allegedly illustrating a closure system including a mesh material. See the December 5, 2006, Final Office Action at page 2. Fig. 6 of Allen is reproduced below.

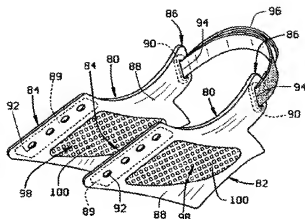


FIG. 6

Notably, Fig. 6 of Allen, and as even more clearly shown in Figs. 3 and 5 of Allen (reproduced below), does not illustrate, and the patent does not describe, a closure system in which a mesh or braided panel extends “over a top instep portion” of a foot-housing member or an upper member, as recited in Applicant’s independent claims 1, 16, and 30.

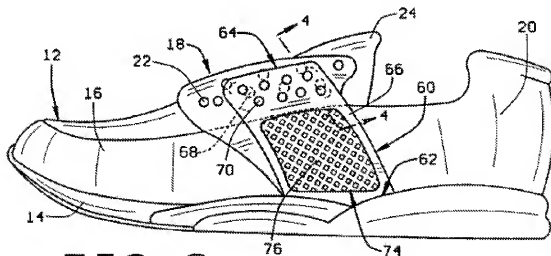


FIG. 3

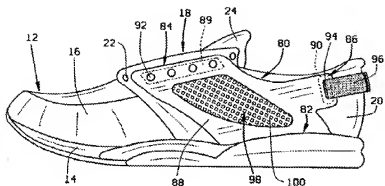


FIG. 5

The Office asserts that, “The closure device, including the mesh panel, has a height (see figures 5 and 6) that clearly extends over the top of the instep.” See December 5, 2006, Final Office Action at page 2.

However, nothing in these figures illustrates that the mesh panel would extend “over a top instep portion” of the article of footwear, as recited in claims 7, 16 and 30. Rather, Figures 5 and 6 merely illustrate a mesh member 98 extending along the side of the article of footwear. See e.g. Figure 5, reproduced above.

In fact, Applicant respectfully submits that Allen teaches away from the claimed arrangement. Notably, Allen is primarily focused on ensuring that the top of the strap does not include the mesh portion, because Allen stresses that the top of the strap [second area, 89] includes a second material which is more rigid and less elastic and flexible than the bottom of the strap [first area, 88] which contains the mesh. For example, Allen states that “[t]he area of the shoe strap construction having greater rigidity but lesser elasticity and flexibility is located at one or more distal ends of the strap ...” See Allen at col. 1, lines 62–65; see also col. 2, lines 14–21, wherein Allen discloses, “... the second plastic material provides the shoe strap with the desired rigidity characteristics in the areas of the shoe strap attached to closure members where greater strength of the strap material is required.” Because Allen requires greater strength and rigidity at the top of the strap, Allen teaches away from the mesh being positioned at the top of the strap.

and therefore he teaches away from the mesh extending over the top instep portion of the article of footwear, as recited in Applicant's claims 7, 16, and 30.

Additionally, in the Office Action, the Office states, "... depending on the wearer, the panels could overlap themselves and therefore completely cover the instep, although this is not claimed." See December 5, 2006, Final Office Action at page 2. Applicant respectfully disagrees.

As can be seen in Figure 5 of Allen, reproduced above, if the shoe were laced in the manner intended, the illustrated mesh panels [98] would not extend over the top instep portion as recited in the claims. Rather, even with the smallest foot possible in the shoe, the laces would bring the eyelet regions [92] into close contact with one another. Pulling on a shoelace through eyelets [92] on each side of the shoe would simply not cause the eyelets to cross over one another. Moreover, even with the laces pulled tightly together, irrespective of the foot size within the shoe, the mesh panels [98] would not overlap one another as suggested by the Office.

Applicant's claims 15, 23, and 37 further patentably distinguish from Allen. These claims recite that the mesh or braided panel-including closure system at least partially covers a secondary closure system. Nothing in Allen teaches or suggests this feature of claims 15, 23 and 37. Rather, assuming without conceding, the secondary closure system is the shoelaces and eyelets and the closure system is shown Figure 6 of Allen, as alleged by the Office (see the December 5, 2006, Final Office Action at page 2), the shoelaces and eyelets are still not even partially covered by the mesh or braided panel-including closure system. As illustrated in Figs. 3, 5 and 6 of Allen, Allen's asserted secondary closure system (*i.e.* the shoelace based closure system as construed by the Office), forms the top part of the closure system. See Allen Fig. 6. Therefore, the portion of Allen alleged by the Office to be the mesh or braided panel-including closure system does not overlay the asserted secondary closure system.

For these reasons, Applicant respectfully submits that the present claims patentably distinguish from Allen. Withdrawal of the rejections and allowance of these claims are earnestly solicited.

B. Claims 9, 12, 18, 20, 32, and 35 Patentably Distinguish from the Combination of Allen and Towns

Claims 9, 12, 18, 20, 32, and 35 stand rejected under 35 U.S.C. § 103(a) as allegedly rendered obvious from the combination of Allen in view of Towns, et al., U.S. Patent No. 6,532,687 (hereinafter “Towns”). See the December 5, 2006, Final Office Action at page 3. Applicant respectfully traverses this rejection and requests reconsideration.

Claims 9, 12, 18, 20, 32, and 35 depend, directly or indirectly, from one of independent claims 7, 16, and 30, discussed above. Towns does not overcome the deficiencies of Allen with respect to the various independent claims described above, nor is Towns relied upon by the Office for this purpose. Accordingly, Applicant respectfully submits that these claims patentably distinguish from the combination of Allen and Towns. Withdrawal of the rejections and allowance of these claims are earnestly solicited.

III. Conclusion

If the Examiner believes that a telephone conference or a personal interview will be useful to advance the prosecution of this application and/or to place the application in condition for allowance, he is invited to contact the undersigned attorney.

Applicant believes that no fees are due for entry and consideration of this Request for Reconsideration. If, however, the Office determines that any fees are required, such as fees under 37 C.F.R. §§ 1.16 and/or 1.17, or if an extension of time is necessary that is not accounted for in the documents filed with this paper, the Commissioner is authorized to debit our Deposit Account No. 19-0733 for any necessary fees, including any necessary extension fees or other fees needed to maintain the pending status of this patent application.

Application of Michael R. Friton – U.S. Patent Appln. No. 10/776,242

All rejections having been addressed, Applicant respectfully submits that this application is in condition for immediate allowance. Allowance of this application is earnestly solicited.

Respectfully submitted,

BANNER & WITCOFF, LTD.

By: /William F. Rauchholz/
William F. Rauchholz
Registration No. 34,701

BANNER & WITCOFF, LTD.
Eleventh Floor
1001 G Street, N.W.
Washington, D.C. 20001-4597
(202) 824-3000 (Telephone)
(202) 824-3001 (Facsimile)

Dated: March 5, 2007